

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN R. McCOOL, :
Plaintiff, :
v. : Case No. 3:06-cv-08-DWA-KAP
JEFFREY BEARD, et al., :
Defendants :
:

MEMORANDUM ORDER

Plaintiff filed a complaint, docket no. 4, which he was granted leave to file in forma pauperis, docket no. 3, and which he recently amended, docket no. 13, into a 149-page complaint against approximately 50 defendants. As codified in 28 U.S.C. §1915(g), the Prison Litigation Reform Act bars a prisoner from proceeding in forma pauperis if he has, while incarcerated, on three or more prior occasions brought actions in federal court which were dismissed as frivolous, malicious, or failing to state a claim. The exception to this bar is for those complaints in which the prisoner "is under imminent danger of serious physical injury." Plaintiff has filed three actions dismissed for failure to state a claim, see McCool v. Nedwidek, 2:03-cv-275-DWA-IJS (W.D.Pa. March 26, 2003), and is subject to the three strikes rule. Neither the complaint nor the amended complaint states a colorable claim that plaintiff is in imminent danger of serious physical injury at any time, and so plaintiff does not fall within the exception to the rule. See Abdul-Akbar v. McKelvie, 239 F.3d 307 (3d Cir.) (en banc) (allegation of serious injury must be as of the time the complaint is filed), cert. denied, 533 U.S. 953 (2001).

It is therefore

ORDERED that plaintiff's complaint, as amended, is dismissed without prejudice to refiling it within thirty days with payment of the full filing fee.

BY THE COURT:

DATE: 11/30/06



DONETTA W. AMBROSE, CHIEF JUDGE,
UNITED STATES DISTRICT COURT

Notice by U.S. Mail to:

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